



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	320 of 2025
Date of filing.:	24.03.2025
First date of hearing.:	09.09.2025
Date of decision.:	10.03.2026

1. Shashi Bala Anand

2. Balraj Anand

....COMPLAINANTS

Both R/o: House No 9, Ward No. 24,

Partap Nagar, Jagdish Colony,

Rohtak 124001

VERSUS

M/s Omaxe Ltd

....RESPONDENT

Regd. office.-19B, First Floor

Omaxe Celebration Mall, Sohna Road

Gurugram 122001

Also at: 7, Local Shopping Centre,

Kalkaji, New Delhi- 110019.

Present: Adv Arjun Kundra, Learned Counsel for complainant
through VC
Adv. Vishal Chawla, Learned counsel for the
Judgement Debtor

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Present complaint has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. Unit and Project Related Details:

2. The particulars of the project, details of sale consideration, amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project.	"Omaxe Shubhangan", Sector 4-A, Kassar Road, Bahadurgarh
2.	Nature of the project.	Group housing project
3.	DTCP License no.	109 of 2008 dated 27.05.2008

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	Licensed area	12.54 Acre
4.	RERA Registered/not registered	Registration vide registration no. 202 of 2017 dated 31.12.2021
5.	Details of unit.	302, RHBH/Tower-23 admeasuring 1280 sq. fts
6.	Date of Builder buyer agreement	12.04.2014
7.	Due date of possession	12.04.2016
8.	Total sale consideration	₹ 31,17,029.20/-
9.	Amount paid by complainants	₹ 30,68,350.67/-
10.	Offer of possession.	None

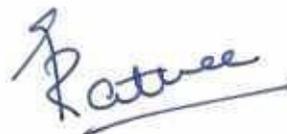
B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Complainants in this case had booked a unit in the project of the respondent namely Shubhangan, situated at Bahadurgarh in the year 2012. Vide allotment letter dated 20.11.2013 complainants were allotted unit bearing no. 302, RHBH/Tower-23 admeasuring 1280 sq. fts. in the said project. A builder buyers agreement was executed between both the parties on 12.04.2014. As per clause 40(a) of the agreement possession of the unit should have been handed over within a period of 24 months from the date of execution of the said agreement i.e by 12.04.2016. The total

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sale consideration of the unit was fixed as ₹ 31,17,029.20/- against which the complainants had paid an amount of ₹ 32,01,523/- till the year 2021

4. It is alleged by the complainants that respondent has failed to develop the project and deliver possession of the booked unit to the complainants within stipulated period of time. From booking of the unit till date, the respondent has never informed the complainants about any force majeure or any other circumstances which were beyond reasonable control of the respondents and has led to delay in the completion and development of the project within the time prescribed in the agreement. There has been an inordinate delay of more than 10 years in delivery of possession of the floor.
5. The complainants have made all the payments before time. That while the complainants have made all the payments on time, the respondents have miserably delayed the construction and development of the project. The respondents have time and again extended the probable date for completion of the project misleading the complainant. The complainants on the other hand have already made payment more than the total sale consideration.
6. That the possession of the unit has been due since April 2016, but till date, no legal offer of possession has been issued by the respondent to the complainants despite collecting more than the entire sale consideration of amount. Even today, the project is far from completion. The complainants


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have time and again requested the respondent to deliver the possession of the booked unit but received no response.

7. Feeling aggrieved, complainant has filed present complaint seeking possession of booked unit along with payment of delay interest for delay caused in delivery of possession.

C. RELIEF SOUGHT

8. The complainants in present complaint seeks following relief:
- i. Direct the respondent to refund the sum of ₹ 32,01,523.35/- to the complainants along with prescribed rate of interest from the date of payment till actual realization.
 - ii. May pass any other order as this Hon'ble Authority may deem fit.
9. During the course of arguments, learned counsel for the complainants reiterated the submissions as made in the complaint file.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 08.09.2025 pleading therein:

10. That the complainants in the captioned complaint are seeking refund of ₹.32,01,523.35/- allegedly paid towards allotment of residential unit no.: "RHBH/TOWER-23/THIRD/302" having area admeasuring 1280 sq.ft.



(hereinafter referred to as the 'unit in question') in the residential project "SHUBHANGAN (3-4 BHK)" situated in sector 4-A, Kassar Road, Bahadurgarh.

11. It is submitted that not even once prior to filing the present complaint, did the complainants asked for refund of their amount on any ground whatsoever and the said fact can be ascertained from the complaint itself as the complainants have failed to annex even a single correspondence.

12. Perusal of clause 40(a) of the Apartment Buyers Agreement dated 12.04.2014 would reveal that the possession of the unit booked by the complainants was to be delivered within a period of 24 months from the date of signing of said agreement however, the same was subject to timely payments of instalments and excluding Sundays, Bank Holidays, enforced Govt. Holidays and days of cessation of work at site in compliance of order of any judicial / concerned state legislative body.

13. The complainants in the present complaint have not fulfilled their obligation and have not paid the instalments on time that had fallen due. Accordingly, no relief for alleged delay in offering the possession can be said to be maintainable. Copies of the various reminder letters issued to the complainants for making payment of balance sale consideration are annexed as Annexure R/1 and R/2 Colly.

14. That Hon'ble Authority has no territorial jurisdiction to entertain and try the present complaint. Since, the parties have agreed vide clause 63 of the

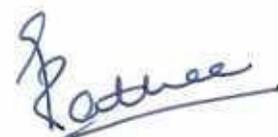

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agreement to exclude the jurisdiction of all other courts except the courts at Bahadurgarh and Delhi, this Hon'ble Authority cannot be said to have jurisdiction to adjudicate the present complaint.

15. That it is also apposite to mention here that total amount paid by the Complainants towards payment for unit in question is ₹.29,33,366.92/- + ₹.1,15,452.50/- towards ST/GST i.e. ₹.30,48,819.42/- and not ₹.32,01,523.35/- as has been alleged in the complaint. Copy of account statement dated 08.09.2025 is annexed hereto as Annexure R-3.

16. That the respondent in order to complete the project has spent hundreds of crores of rupees in mobilizing resources, generating and creating infrastructure, manpower, building material, installation of electrical equipment, sewerage systems, water pipelines and other most of services and amenities to make living of the allottees in the project as state of pride and comfortable. Further, due to the pandemic of Covid-19 the construction activity in the project in question had come to a standstill and it was only after lots of efforts that things have gotten back to track. Still further, even the Government of India as well as the present Authority realizing the difficulties being faced by the real estate sector due to the pandemic had invoked a force majeure clause, thereby granting some relief to the real estate industry.

17. During the course of arguments, learned counsel for the respondent submitted that as per latest statement of account annexed as Annexure R-3



the total amount paid by the complainants to the respondent is ₹30,68,819.42/-. In response, learned counsel for the complainants has submitted that the total amount paid by the complainants to the respondent is 32,01,523.35/- for the unit in question bearing no. RHBH/Tower 23/Third/302, Omaxe Shubhangan, Bahadurgarh and receipts have been annexed as Annexure C-3(colly).

E. ISSUES FOR ADJUDICATION

18. Whether the complainants are entitled to receive refund of the paid amount along with interest in terms of Section 18 of Act of 2016?

F. FINDINGS ON OBJECTIONS OF THE RESPONDENTS

F.I Objection regarding territorial jurisdiction

One of the averments of respondent is that Authority does not have territorial jurisdiction to entertain and try the present complaint in as much as the parties have agreed to exclude the jurisdiction of all other courts except the courts at Bahadurgarh and Delhi. In this regard it is submitted that as per notification no. 1/92/2017/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose. In the present case the project in question is situated within the planning area Bahadurgarh, therefore,



this Authority has complete territorial jurisdiction to deal with the present complaint.

F.II Objections raised by the respondent stating that dispute ought to be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 (as amended in 2015)

Another averment of the respondent is that dispute ought to be referred under Section 8 of the Arbitration & Conciliation Act, 1996 (as amended in 2015) as per clause 63 of agreement for sale dated 12.04.2014. In this regard Authority observe that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that Section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on **National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to



refer parties to arbitration even if the agreement between the parties had an arbitration clause.

G. OBSERVATIONS OF THE AUTHORITY

19. After hearing the submissions of both parties, Authority observes that complainants in present complaint had booked a unit in the project of the respondent in the year 2012 for a total sale consideration of ₹ 31,17,029.20/- against which the complainants have made a total payment of ₹ 32,01,523/- till the year 2021. A builder buyer agreement was executed between the parties on 12.04.2014. As per clause 40(a) of the said builder buyer agreement, possession of the unit was to be delivered within a period of 24 months from the date of execution. Said period expired on 12.04.2016. Complainants are aggrieved by the fact that despite a lapse of more than 4 years from the proposed deemed date of possession, respondent is not in a position to deliver possession of the booked unit as the construction work is not complete at the project site.

20. Admittedly delivery of possession of the unit in question has been delayed beyond the stipulated time. Respondent has attributed this delay in construction to disruption in construction activity due to COVID-19 outbreak and delay in payment of instalments by the complainants/allottee. In this regard it is observed that the COVID-19 outbreak hit construction activities post 22.03.2020, whereas the delivery



of possession of the unit in question was to be handed over by 12.04.2016. Therefore, as far as delay in construction due to outbreak of Covid-19 is concerned, respondent cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition. Further, reliance is placed on judgement passed by Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020 dated 29.05.2020** has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since september,2018. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by August, 2022 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself”

Respondent cannot be allowed to take the plea of force majeure conditions towards delay caused in construction of the project/delivery of possession as



the same did not affect the construction activities at the site of the project during the proposed possession timeline.

Further the respondent has alleged that the complainants failed to make payment of instalments on time. In this regard it is observed that till date the construction of the project is yet to be completed and the respondent has already taken more than the sale consideration amount from the complainants by 2021. The respondent has failed to show as to which payment of instalment had been delayed by the complainants and how the same affected the construction process. Therefore, this plea of the respondent is rejected.

21. Fact of the matter is that even after a lapse of 10 years from the due date of delivery of possession i.e 12.04.2016, the construction of the project is not complete and the respondent is not in a position to handover possession in foreseeable future. Even in its reply/oral submissions the respondent has failed to apprise the Authority the status of construction of the unit booked by the complainants and further timeline for delivery of possession. In such circumstances, the complainants cannot be forced to wait further for delivery of possession of the booked unit for an indefinite amount of time for a unit for buyer's agreement was executed back in 2014. Complainants in this case do not wish to continue with the project on account of inordinate delay caused in delivery of possession and are hence seeking refund of paid amount along with interest as per RERD Act 2016.



22. Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" in CIVIL APPEAL NO(S). 6745 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, the allottee has an unqualified right to seek refund of amounts paid to the promoter along with interest. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer; the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

23. The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainants wish to withdraw from the project of the respondent, therefore,

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the Authority finds it to be a case fit for allowing refund in favour of the complainant. So, the Authority hereby concludes that the complainants are entitled to receive a refund of the paid amount along with interest as per Rule 15 of HRERA Rules 2017 on account of failure on part of the respondent. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: *“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%;*



Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”

24. Hence, Authority directs respondent to refund to the complainants the paid amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.80% (8.80% + 2.00%) from the date amounts were paid till the actual realization of the amount.

25. Authority has got calculated the interest on total paid amount from date of payments till date of order(i.e 10.03.2026) and same is depicted in the table below:

Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest Accrued till date of order i.e 10.03.2026 (in ₹)
1.	3,00,000/-	24.08.2012	439131/-
2.	1,79,150/-	20.11.2012	257570/-
3.	2,96,670/-	15.06.2013	408361/-
4.	68,000/-	19.05.2015	79456/-
5.	3,57,803/-	22.05.2015	417765/-
6.	7,75,039.35/-	28.12.2015	854471/-
7.	2,48,365/-	17.09.2016	254418/-

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8.	2,98,730/-	14.03.2017	290277/-
9.	1,60,100/-	19.08.2017	148085/-
10.	20,381/-	15.01.2019	15752/-
11.	1,37,902/-	16.07.2019	99153/-
12.	1,91,563/-	18.01.2021	106448/-
Total: 3033703.35/-			3370887/-
Total payable to complainant: 64,04,590.35/-			

26. Upon perusal of record it is observed that the complainants in the complaint file have annexed receipts for a total amount of ₹ 32,01,523.35/-, however, out of all these receipts, the receipt pertaining to amount of ₹ 167,820/- placed at page 63 of the complaint file has been paid qua unit bearing no. ITC/SECOND/OFFICE/224, India Trade Centre by one of the complainants, Mr. Balraj Anand. This particular receipt of amount paid to respondent by the complainant shall not be considered under present complaint. Thus the receipts placed on record by the complainants qua the unit in question is for an amount of ₹ 30,33,703.35/-.

Further the respondent vide statement of accounts dated 08.09.2025 the respondent has admitted to having received an amount of ₹ 30,68,350.67/-. The remaining amount of ₹ 34,647.32/- (30,68,350.67 - 30,33,703.35) is a credit note given by the respondent to the complainant and not an actual payment made by the complainant towards the unit in question and hence,

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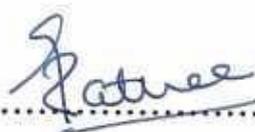
the same is not being considered. Accordingly, the total amount paid by the complainant in the captioned complaint works out to ₹ 30,33,703.35/-.

H. DECISION OF THE AUTHORITY

27. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. Respondent is directed to refund the entire amounts along with interest of @ 10.80% ₹ 64,04,590.35/- to the complainants as specified in para 25 of this order. Interest shall be paid up till the time period under section 2(za) i.e till actual realization of amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

28. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.


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DR. GEETA RATHEE SINGH
[MEMBER]